IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 474 of 2002

to

FIRST APPEAL No 481 of 2002

with

CROSS-OBJECTION NOS. 41/2002 TO 48/2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPL.LAQ OFFICER

Versus

NAGARBHAI NARINHBHAI PATEL

Appearance:

1. First Appeal Nos. 474 of 2002 to 481 of 2002

MR A.D. OZA, GOVT. PLEADER WITH

PREMAL JOSHI,AGP for Petitioner No. 1-2

MR AJ PATEL, SENIOR COUNSEL WITH

MR JAYESH PATEL, for Respondent No. 1

2. CROSS-OBJECTION NOS. 41/2002 to 48/2002
MR AJ PATEL, SENIOR COUNSEL WITH
MR JAYESH PATEL, for Claimants
MR A.D.OZA, GOVT. PLEADER WITH
MR PREMAL JOSHI, AGP for Opponents.

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE C.K.BUCH

Date of decision: 18/09/2002

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. This group of land acquisition appeals has been preferred by the appellant- Special Land Acquisition Officer (hereinafter referred to as the Spl.L.A.O) -Executive Engineer, Narmada Scheme, Division No.4/3, Kadi, Dist: Mehsana -original opponent, arising from the judgment and award passed by the ld. Extra Asstt. Judge, Mehsana dated 14.9.2000 passed in Land Reference Case Nos. 263/1996 to 270/1996, challenging the award passed by the ld. Trial Judge granting additional compensation deciding Land Reference Cases in favour of the respondents claimants. As found from the judgment under challenge, land acquisition proceedings were initiated and lands of the respondents claimants were acquired for the "public purpose" and as provided under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the L.A.Act), notification under Section 4 of the L.A.Act was issued on 13.10.1992. The purpose for acquisition was for Narmada Canal and the lands in question are situated at village Ghughla, Ta: Kadi. After issuance of notification under Sec.4 of the L.A.Act, Section 6 Notification was issued on 29.3.1994 and as contemplated under the provisions of the L.A.Act, notices were issued and Spl.L.A.O. had declared his award on 6.3.1995. Before the L.A.O., the respondents claimants have claimed compensation for their land at the rate of Rs.20/ per sq.mt. and Spl.L.A.O. had, while declaring his award, had fixed the market value of the lands at Rs.3/ per sq.mt. As the claimants were not satisfied with the said award, a reference was moved at the instance of the respondents claimants under Section 18 of the L.A.Act before the Collector and in the said reference, the respondents claimants had claimed market value of the land at Rs.30/ per sq.mt. The Collector had forwarded the said references for determination to the District Court and these Land Reference Cases were registered being Land Ref. Case Nos. 263/1996 to

270/1996. These Land Reference Cases were placed for determination before the ld. Extra Asstt. Judge, Mehsana. It is the case of the respondents claimants while moving reference under Sec.18 of the L.A.Act that while fixing the market value, the Spl.L.A.O. has not properly fixed the market value of their lands as their lands are irrigated lands and it is the case of the claimants that their lands were irrigated lands and they used to take three crops during the year and they also used to take commercial crops like commercial crops like Rice, Castor-oil seeds, Mustard Seeds and Cotton seeds. It is their contention that the market value fixed by the Spl.L.A.O. at Rs. 3/ per sq.mt.. is highly inadequate not reflecting the fair and just market value of the lands looking to the situation of the lands as according to them, the acquired lands are situated in the developed area and are capable of being used for Non-agricultural use (N.A. use for short). It is the case of the respondents claimants that all lands which are acquired, are situated in the commercial area and there are many industries situated nearby the acquired lands. There are educational institutions and the village has also facility of bus service. There are facilities of water and electricity. The village was also connected with roads. It is their case that by acquiring the land in part, their remaining lands have been divided and because of acquisition severance of the lands has taken place and according to them, their lands has potential value and looking to the situation and potential value of their land, for which they claimed compensation at Rs.30/ per sq.mt.. All the claimants in the References had claimed compensation for the lands of 8 different survey numbers and of different areas which are acquired which is reflected in para-4 of the judgment of the trial Court. In short, it is the case of the claimants that they are entitled to the additional compensation at the rate of Rs.30/ per sq.mt. as according to them, Spl.L.A.O. has not properly appreciated the evidence while fixing the market value of the land and the compensation awarded at the rate of Rs.3/ per sq.mt. is highly inadequate.

2. Before the trial Court, for claiming additional compensation for their lands, the respondents claimants have relied upon the revenue record in respect of their lands namely 7/12 extracts of the acquired lands to show that from the acquired lands they used to get agricultural products by growing crops like Bajari, Juvar, Cotton, Castor-oil Seeds etc. They also placed reliance upon the earlier award passed by the District Court dated 20.1.2000 passed in Land Ref. Case Nos. 271/1996 to 279/96 in respect of the acquisition for

Narmada Yojna No.3 in which notification under Sec.4 of the L.A.Act was issued on 24.11.1994 and lands of village Kasva, Ta: Kadi, were acquired and the District Court had fixed market value of the land at Rs.28-70 per sq.mt. The claimants had also placed reliance upon the another award of the District Court in respect of acquisition of land of village Sedardi, Ta: Kadi and the acquisition was also for Narmada Canal for which Notification under Sec.4 of the L.A.Act was issued on 23.6.1992 and the District Court had, while deciding the reference, has fixed the market value at Rs.26-70 per sq.mt.

3. Before the trial Court, oral evidence was also led and one Shri Rasikbhai Chaturbhai Patel was examined on behalf of all the claimants and he gave his evidence which is found at exh.24. As found from his deposition that he is one of the claimants of Land Reference Case No.270/1996 and his land bearing Survey No.237 of village Ghughla, Ta: Kadi admeasuring 1160 sq.mts. were acquired for the public purpose and lands of other claimants were also acquired for the same purpose. His lands and other lands acquired were adjacent to each other and all the lands were of similar type. He further deposed that notification under Sec.4 of the L.A.Act was published in the Govt. Gazette on 13.12.2002 and thereafter, notification under Sec.6 of the L.A.Act was published on 29.3.1994. It is further found from his evidence that the Spl.L.A.O. has declared his award on 6.3.1995 fixing the market value of the land at Rs.3/ per sq.mt. as against their claim of Rs.20/- per sq.mt. As the award of the Spl.L.A.O. was inadequate, they moved the Collector by filing References under Section 18 of the L.A.Act for additional compensation. It is further found from his evidence recorded before the Court that all the acquired lands were agricultural lands and also having facilities for agriculture. They used to take water from the well of Shri Babubhai Chaturbhai and they used to take three crops in a year like Castor-oil, Jiru, Bajari, Variyali, Raida, vegetables and from these agricultural produces, they used to get income to the extent of about Rs.40,000/ to Rs.45,000/. It is further deposed that they have to spend about 25% amount towards agricultural expenses and they used to sell agricultural produce either privately or to sell the same to Kadi Market Yard. He has also given description about the population of village Ghughla and deposed that population of village Ghughala is of about 800 people and village has facility of light, water and in their village, there is a school. There are many co-operative societies. He deposed that there is a road between Kadi -Viramgam and on the said road, there are factories, oil-mill and

ginning factory. The distance of village Ghughla from Kadi is approximately about 7 Kms. There are other adjoining villages namely Kasva, Nabipura, Sujatpura, Vidaj, Sedardi and development in all other villages is similar to his village Ghughala. As there are all facilities and there is industrial development, the prices of the lands of all the villages are fetching high and the same are similar. It is further found from his deposition that Narmada Canal goes from village Kasva to Sedardi and from Sedardi to village Ghughla. Acquisition was also taken place for the same purpose and the lands of village Kasva were also put under acquisition as well as lands of village Sedardi was also put under acquisition and he also produced judgments/awards of the District Court in respect of fixing of the market value of the lands of village Sedardi and Kasva. These awards of the District Court are at exh. 22 & 23. He has also referred to in his evidence and produced record of rights namely 7/12 extracts of their lands which are at exh.14 to 21. According to him, lands of village Kasva and Sedardi on the point of view of agricultural, are similar. As found from his cross-examination, he has deposed that he does not keep any accounts for agriculture and further that he could not say that even after deducting the expenses for agriculture, how much amount he will fetch at the end of the year. He could not say as to which crops the persons from the adjoining village are growing on their land and he has not seen any figures/ accounts about the agricultural income earned from their lands as even other persons are also not keeping the accounts in this regard. He has further deposed in the cross-examination that if they require tractor, they used to take it on hire and during Summer and Winter seasons, they use tractor for agricultural operations. He has further deposed that they have not made any attempts for development of their lands. He has admitted in the cross-examination that for fixing income from agriculture, one has to see what type of crops is grown and it also depends upon the seeds which they required to use and expenses incurred for consumption of electricity, fertilizers etc. He has further admitted that before the Spl.L.A.O. when he received notice, he has not produced any documents. He has denied that he is deposing falsely for getting more compensation. As found from the deposition Shri R.C.Patel, lands of village Kasva and Sedardi were acquired for the same purpose and the boundaries of these villages are adjacent to the boundaries of village Ghughla. There is electricity facility in village Ghughla, and a school as well as a co-operative societies are also there. On Kadi-Viramgam Road, there are industrial units. Documents exh.14 to 21

namely 7/12 extracts show that they used to get crops like cotton, castor-oil seeds, Bajari, Juvar at the relevant time when lands in question were acquired. It is true that the claimants had not produced any documentary evidence regarding income they used to earn from agricultural produce every year. It is also necessary for us to refer to the award of the Spl.L.A.O. wherein he had given description of the lands acquired. As found from the award of the Spl.L.A.O., he has noted the quality of the land which is reproduced as under:-

(1) acquired lands are irrigated lands and irrigation is also by private well.
(2) lands are of Goradu type of lands.
(3) lands produce crops like Jiru, Rice, paddy, Raida etc;
(4) acquired lands have no potential value for N.A.use.

4. On behalf of the opponents, one Shri Shri Prafulchandra Solanki had deposed at exh.27. As found from his evidence, at the relevant time, he was working as a Spl.L.A.O. with Narmada Scheme since 11.7.1998 and the lands of village Ghughla, Ta: Kadi were acquired for Narmada Canal Project and after Sections 4 & 6 notifications were issued and notices as contemplated under the provisions of the L.A.Act were issued to the owners of the land. No documents were produced by them nor they have produced any evidence regarding expenses expenses incurred by them for growing agricultural produce/ crops and they also did not produce any sale-instances in respect of any village. As found from the award, the Spl.L.A.O. has fixed the market value of the land at Rs.3/ per sq.mt. for irrigated lands and at Rs.2/ per sq.mt. for non-irrigated lands. The type of lands were shown Middle Class and of Goradu type of lands. Rainfall is less and irregular. There is no development in the village and population of the village is about 1200 to 1300 persons and all are having business of agriculture. As found from the cross-examination, he has deposed that he was not present at the time of acquisition of the acquired lands. He has further deposed that he has not seen the acquired lands. He has admitted in his evidence that on the road from Kadi-Viramgam, one can go to village Ghughla. He has denied that the distance between village Ghughla and his village is about 4 to 5 kms. It is further found from his deposition that he has no personal knowledge about the award declared by the L.A.O. He has denied that he is deposing before the Court to see that claimants should not get more compensation.

5. On behalf of the opponent, one more witness namely one Prahladbhai Jivanbhai Patel working as Asstt. Engineer at Kadi since last 11 Years was examined whose evidence is recorded at exh.28 and he has seen the acquired lands. He has deposed in respect of issuance of notifications under Sections 4 & 6 of the L.A.Act as well as notices were issued to the claimants as contemplated under the provisions of the L.A.Act. It is further found from his evidence that claimants have not produced any documentary evidence for their claim in respect of fixing the market value of the land, and they have also not produced any sale instances and even the claimants have not produced sale instances. He has further deposed that none of the claimants has produced any bills or vouchers to show about the expenses which they have incurred while getting the agricultural income from the acquired lands. It is further found from his evidence that while fixing the market value by Spl.L.A.O., they have relied upon the sale instances of earlier five years as well as sale instances registered with the office of Sub Registrar. As found from his evidence that distance between village Ghughla and Kadi is about 20 Kms. and village Ghughla is interior from the road side. The people of village Ghughla are agriculturists and there is no industrial unit found in the village. There is no hospital in the village. No Bank is situated and type of land is Goradu Medium Class land. He has further deposed that agriculture depends upon rainfall. It is further found from his evidence that there is irrigation facility. He has further deposed that while fixing the market value of the land, Spl.L.A.O. has fixed the market value of the land at Rs.3/ per sq.mt. for irrigated lands and Rs.2/ per sq.mt. for non-irrigated lands. It is further found from the deposition that he was present at the time when acquisition proceedings were initiated and notices under Sec.9 of the L.A.Act were also received by him. Canal comes from village Khand Morva to village Ghughla and from their village it goes to village Kasva and Sedardi. Boundaries of village Ghughla, Khavad, Sedardi and Khand Morva are adjacent to each other. The distance from village Ghughla to Vidaj is about 15 Kms. Witness has admitted that village Kasva and Vidaj are adjoining to each other and further that the lands of village Kasva were also acquired by their office and the Court has declared award in respect of lands of village Kasva. He has further deposed that in respect of fixation of price of the lands of village Kasva, State Government has not preferred any appeal and the Government has accepted the award of the District Court. He has further admitted that in the award passed by the District Court in respect

of village Kasva, the Court has fixed market value of the land at Rs.27.70 per sq.mt. He has denied that for the purpose of agriculture, lands of village Ghughla and Khand Morva are similar. He has further denied that the lands of village Ghughla are better than the lands of other village. He has admitted that on Kadi-Viramgam road, near Kadi, there are industrial units.

6. As found from the award under challenge and while fixing the market value of the land, it is found that the Ld. trial Judge has considered the oral evidence led before him and has also considered the awards of the District Court in respect of lands of villages Kasva and Sedardi. These awards are on record at exh.22 & 23. The Reference Court accordingly while determining the market value of the land, has that the claimants have proved that the award of the Spl.L.A.O. fixing the market value of the lands of village Ghughla is inadequate and that the claimants are entitled to get additional compensation of their acquired lands. Ld. trial Judge has also discussed the provisions of Sec.23 of the L.A.Act and principles of law for fixation of market value of the lands and has considered that reasonable, fair and just compensation is to be assessed and has further observed that parties have not produced any sale-instance in respect of the acquired lands in light of the notification under Section 4 of the L.A. Act on the basis of which one is required to fix the market value. According to the ld. trial Judge, though the claimants claimed before the Spl.L.A.O. market price of the lands at Rs.20/ per sq.mt. and even when claimants have received the notice issued by the Spl.L.A.O. as contemplated under the provisions of the L.A.Act, the claimants have not produced any documentary evidence nor produced any record to show what amount they are getting by way of agricultural income and according to the claimants, their case is that they used to get agricultural income of Rs.40,000/ to Rs.45,000/ per year per vigha. Ld. trial Judge has not accepted the evidence on this point led by the claimants namely on the point of agricultural income that they used to get from agriculture. However, Ld. trial Judge has deducting 60% of the amount as the claimants are required to incur costs for such cultivation and the ld. trial Judge has fixed earning of the claimants from agricultural produces from the acquired lands at Rs.20,000/. The ld. trial Judge has also discussed and considered surroundings of other villages adjacent to village Ghughla and has also considered the population. Ld. trial Judge has not accepted the case put forward by the claimants while fixing the market value of the lands of village Kasva and

Sedardi. He has already discussed in respect of notification under Sec.4 of the L.A.Act which was issued when the lands of village Kasva were acquired and as observed earlier, notification under Sec.4 of the L.A.Act was issued in respect of lands of village Kasva on 6.7.1992 and District Court has fixed the market value of the lands at Rs.28.70 per sq.mt. State has not preferred any appeal against the said award passed by the District Court. In respect of acquisition of lands of village Sedardi which is at exh.23 where notification under Section 4 of the L.A.Act was issued on 23.6.1992 and while fixing the market value of the land, the District Court has granted additional amount of compensation at the rate of Rs.26.70 per sq.mt. During the hearing, it was brought to our notice that the said award of the District Court at exh.23 was challenged before the High Court and the High Court has while disposing of the first appeals being First Appeal Nos. 1919/2001 to 1942/2001, dismissed the appeals vide judgment and order dated 1.5.2001 and confirmed the award of the District Court. As found from the record, as per list exh.30, the claimants have produced certain documents before the District Court and for such production there is an endorsement made by the ld. Dist.Govt. Pleader by endorsing "No Objection" for production of such documents. Exh.31 is the judgment of the High Court dated 8.8.2000 in First Appeal No.6079/1999 and connected matters and this judgment was was in respect of the appeals filed by the State Government challenging the judgment and award of the District Court dated 4.12.1998 passed in Land Ref. case No.2904/1993 and connected cases. While deciding said appeals, the Division Bench of this Court has allowed the appeals partly filed by the claimants and market value of the lands of village Vidaj was fixed at Rs.27.30 per sq.mt. Exh.32 is the award of the District Court in Land Ref. Case No.363/1989 and connected cases dated 16.5.1995. This award is in respect of lands of village Budhasan, Ta: Kadi. The purpose for the acquisition of the said lands was for GIDC. As found from the said award, lands of village Budhasan were acquired under the notification under Sec.4 of the L.A.Act issued on 1.3.1979 and the District Court has fixed the market value of the said lands at Rs.20/ per sq.mt. Exh.33 is the judgment of the Division Bench of this Court in First Appeal No. 6484/1995 dated 3.8.1996. As found from the said document, the State Government has challenged the judgment and award passed by the District Court in respect of the acquisition of the lands of village Budhasan fixing the market value of the land at Rs.20/ per sq.mt., meaning thereby that the challenge was in respect of the award of the District

Court which is at exh.32. We are not discussing in detail as while deciding these appeals fixation of the price of the lands of village Budhasan is not relevant and further that lands of village Ghughala and lands of village Budhasan are very near to Kadi and road leading Ahmedabad from Kadi. Ld. trial Judge has also while fixing the market value of the land has also considered the situation of the lands of village as found from the map produced before him and after recording of the evidence said map was returned to the parties and the said map is not the part of the record. During hearing of these appeals, Mr.Patel has produced the said map which was placed before the trial Court when the ld. trial Judge has considered for fixation of the market value of the land of village Sedardi, Vidaj, Vadsar and village Ghughla.

7. In light of the evidence adduced by the parties and the observations made by the ld. trial Judge while fixing the market value, it is the contention of Mr. Oza, ld. Govt.Pleader appearing with Mr. Premal Joshi, ld. AGP for the opponent that the ld. trial Judge was not right in granting additional compensation of the land and further as found from the evidence the claimants themselves had claimed compensation at the rate of Rs.20/ per sq.mt. while moving the reference before the District Court and ld. trial Judge was not justified in entertaining the reference and by granting compensation at the rate of Rs.16/ per sq.mt. as according to ld. GP Mr. Oza, the ld. trial Judge was not justified in granting additional compensation in respect of the lands of claimants by granting Rs.13/ per sq.mt. According to Mr. Oza, the ld. trial Judge has rightly not relied upon the award of the District Court in respect of acquisition of lands of village Sedardi and Kasva. While taking us through the evidence of the claimants and evidence of the opponent, it is the contention of ld. Govt. Pleader Mr. Oza that as admitted by the claimants that they have not produced any documentary evidence in respect of income they used to get out of agricultural produces from their land and further they have not produced any sale-instances, the ld. trial Judge was not right in granting additional compensation and further more, ld. Spl.L.A.O. has while declaring his award, has in fact considered last five years transactions in respect of the lands of the village Ghughala and he arrived at the market value of the land at Rs.3/ per sq.mt. In short, it is the contention of Mr. Oza that the ld. trial Judge was not right in granting additional compensation of Rs.13/ per sq.mt. in favour of the claimants and the same is without any basis. During

hearing, Mr. Oza has also submitted that unfortunately, even before the trial Court, appellant-original opponent could not brought to the notice of the District Court in respect of the award earlier passed in respect of lands of village Kotda and Bhaldi as even the lands of village Kotda and Bhaldi were acquired for the same purpose vide notification under Sec.4 of the L.A.Act issued on 27.8.1992 and fixation of the price was much less than Rs.13/ per sq.mt. Mr. Oza, ld. Govt. Pleader has vehemently urged that the award of the District Court granting additional compensation of Rs.13/ per sq.mt. be set aside and even no case is made out for granting any further amount in favour of the claimants in respect of the cross-objections filed in these appeals by the respondent.

8. Mr.A.J.Patel, ld. Senior Counsel has while taking us through the evidence as well as while taking through the award under challenge, vehemently urged that ld. trial Judge was not right in not considering the award of the District Court produced on the record of the case in respect of the fixation of the market value of the lands of village Kasva and Sedardi and ld. trial Judge ought to have relied upon the awards of the District Court for these two villages which are produced at Exh.22 & 23. While taking us through the map and in light of the oral evidence before the trial Court, it is the contention of Mr. Patel that acquired lands of village Ghughla is adjacent to the lands of village Sedardi and even as per the evidence led by the claimants on the point of agricultural income which they used to earn by raising three crops in a year, the ld. trial Judge ought to have determined the market value of the land atleast by considering the award of the District Court in respect of the lands of village Sedardi. Mr. Patel has,accordingly, urged that in view of the award of the District Court in respect of the lands of village Sedardi and the fact that the lands were also acquired for the similar purpose wherein notification under Section 4 of the L.A.Act was issued before four months of the acquired lands namely 23.6.1992 and considering the evidence on the point of similarity of the lands and income that they used to get, ld. trial Judge was required to fix the market value of the land by relying upon the award of the District Court exh.23. Further, the said award in respect of lands of village Sedardi was confirmed by the High Court while dealing with the first appeals being First Appeal No. 1919/2001 and group matters. Accordingly, while pressing cross-examinations filed by the respondents claimants, it is the submission of ld. Senior Counsel Mr. Patel that in view of the

decision of the High Court while confirming the award of the District Court in respect of the lands of village Sedardi, fixation of the market value of the acquired lands be fixed at Rs. 26.70 ps. In support of his submission, he has placed reliance upon the decision of the Supreme Court in the case of Thakersi Devji & Others v/s Executive Engineer & Another, reported in 2001(2) GLH 583. It is the contention of ld. Senior Counsel Mr. Patel on the basis of the decision of the Apex Court that as found from the evidence in the present case, lands of village Sedardi and acquired lands which are situated at village Ghughla were of similar type of land and boundaries of village Ghughla and Sedardi are adjacent to each other. There is no justification why ld. trial Judge was not required to rely upon the said award Exh.23 and further that said award of the District Court in respect of the lands of village Sedardi was confirmed by the High Court subsequently. On going through the award exh.23, fixation of the market value of the lands of village Sedardi was not based on the evidence led by the parties in respect of fertility of the lands and getting agricultural income. For fixing the market value, the trial Court has not adopted the yield method and as found from the award, ld. trial Judge has placed reliance upon the earlier award of the District Court and considering the issuance of notification under Section 4 of the L.A.Act, has added 10% of the amount while relying upon the earlier award while fixing the market value of the lands of village Sedardi at Rs.28.70 per sq.mt. In our view, the basis for fixation of the market value by comparing the lands of village Sedardi and Ghughla, in absence of cogent evidence led by the parties, it is not possible for us to accept the fixation of market value of the land on the basis of award exh.23 on the point of fertility and yield of the lands in question. However, while considering the award under challenge, it is not possible for us to accept the contention of ld.Govt. Pleader Shri Oza that ld. trial Judge has committed an error while granting additional compensation in favour of the claimants.Award of the Spl.L.A.O. while giving description of the acquired land which is found in the award itself, and as found from the award of the Spl.L.A.O. in respect of village Sedardi, in our view, looking to the lands of village Ghughla which are just adjacent to the lands of village Sedardi and when learned trial Judge has fixed the market value of the land by granting additional compensation in favour of the claimants by awarding Rs. 13/ per sq.mt., we are of the view that ld. trial Judge ought to have even considered the situation found in the map between two villages, one can certainly say that village Ghughla is very close to

village Sedardi and their boundaries are adjacent to each other and while determining the market value, though one can not fix the same market value which was fixed in respect of the lands of village Sedardi which was confirmed by the High Court, we are of the view that there is some substance in the submissions of ld. Senior Counsel Mr. Patel while considering the cross-objections wherein according to the claimants, they have claimed compensation for disallowed claim by the trial Court as according to the claimants, they are entitled to the compensation to the extent of Rs.30/ per sq.mt. There is no challenge in respect of the evidence of Shri R.C.Patel who has been examined on behalf of the claimants about the development of their village and in respect of the income by way of agricultural income.

9. In light of the submissions made before us and in light of the evidence, in our view, though the claimants are not entitled to the same price of the land as fixed by the ld. trial Judge which was confirmed by the High Court as per award exh.23 of the District Court on the record of the case, looking to the situation as found from the map, distance from village Sedardi to Kadi-Viramgam Road is much less than the distance from village Ghughla and looking to such distance, the claimants are not entitled to the market value of the lands of village Sedardi though the High Court has confirmed the award in respect of the lands of village Sedardi. However, as found from the map and in light of the evidence led, the boundaries of village Ghughla and Sedardi are adjacent to each other and though the claimants are not entitled to the same price of the land of village Sedardi, we are of the view that atleast they are entitled to some more price than the price fixed by the trial Court and accordingly in our view, it will be just and proper to fix the market value of the land of village Ghughla at Rs.20/ per sq.mt. In our view, the respondents claimants are entitled to more amount by way of compensation than the amount as awarded by ld. trial Judge. Under the circumstances, the appeals filed by the State deserve to be dismissed and the cross-objections filed by the respondents claimants deserve to be allowed partly as we are of the view that the market value of the acquired lands of village Ghughla would be Rs.20/ per sq.mt. Accordingly, the respondents claimants are entitled to the additional amount of compensation at Rs.13/ per sq.mt. and we accordingly modify the judgment and award of the District Court wherein the District Court has granted additional compensation of Rs.13/ per sq.mt. and the same is modified and enhanced to Rs. 17/ per sq.mt. Accordingly, cross-objections filed by the

respondents claimants are partly allowed. Rest of the award of the District Court is hereby confirmed. However, respondents claimants shall be entitled to the interest on the amount of solatium as provided under Sec.23(2) and 23(1)(a) of the L.A.Act.

10. In the result, appeals filed by the appellant State are hereby dismissed with costs and cross-objections filed by the respondents claimants are partly allowed as aforesaid with proportionate costs. Appellant State is directed to deposit the amount with proportionate costs and interest with the trial Court within three months from the receipt of the judgment.

18.09.2002 [D.K. TRIVEDI, J]

[C.K. BUCH, J]

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